

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

VILLAGE THRIFT STORES, INC.¹

Employer

and

Case 4–RC–20878

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 56, AFL-CIO²

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, Village Thrift Stores, is engaged in the retail sale of used clothing and accessories at several stores, including a store in Pennsauken, New Jersey (herein called the Store). The Petitioner, UFCW Local 56, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of employees employed at the Store. The parties stipulated to the scope and composition of the unit. The sole issue in this case is whether the election should be delayed until the Store reaches its peak employee complement, as urged by the Employer. The Petitioner contends that the election should not be delayed.

A hearing officer of the Board held a hearing, and the Employer filed a brief.³ I have considered the evidence and the arguments presented by the parties concerning the issue of when the election should be held. As discussed below, I have concluded that the anticipated increase in the Employer’s workforce does not warrant a delay in scheduling the election or changing the eligibility cutoff date.

In this Decision, I will first review the factors that must be evaluated in determining the appropriate time frame for an election. Then, I will present the facts and reasoning that support my conclusion.

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

³ The Petitioner presented its arguments orally at the trial.

I. FACTORS RELEVANT TO DETERMINING THE ELECTION DATE

The Board's Casehandling Manual (Part Two) Representation Sec. 11302.1, provides that, "An election should be held as early as is practical." It further states that a Regional Director should normally direct an election between the 25th and 30th day following the issuance of a Direction of Election.

Where an employer has a fluctuating work force, the Board must balance the goals of ensuring maximum employee participation in the election and permitting current employees to have representation as quickly as possible. *Saltwater, Inc.*, 324 NLRB 343, 344 (1997); *Elsa Canning Co.*, 154 NLRB 1810 (1965). See also *Bituma Corp. v. NLRB*, 23 F.3rd 1432 (8th Cir. 1994), enforcing 310 NLRB No. 167 (1993).⁴ If an employer, despite hiring some employees seasonally, is engaged in virtually year-round operations, and the number of employees in the year-round complement is relatively substantial, the Board will direct an immediate election so as not unduly to hamper year-round employees in the exercise of their statutory rights. *The Baugh Chemical Company*, 150 NLRB 1034 (1965).

In seasonal industries, the Board has sometimes directed that elections be delayed until the employer's peak season. See *Millbrook, Inc.*, 204 NLRB 1148, 1149 (1973); *Kelly Brothers Nurseries, Inc.*, 140 NLRB 82, 86-87 (1962); *Brooksville Citrus Growers Association*, 112 NLRB 707, 710 (1955). In such cases, the employer's business has often been related to agricultural growing seasons.

II. FACTS

The Employer operates a chain of for-profit thrift stores. It purchases used clothing and accessories, sorts the merchandise, and resells it. The Employer has 27 classifications of employees at the Store including cashiers, floor runners, maintenance employees, truck unloaders, distributors, and sorters, among others. The employees work on two shifts; the day shift is from 8:00 a.m. to 4:30 p.m., and the evening shift is from about 5:00 p.m. to 9:00 p.m.

The Employer's Executive Vice-President, Christopher Stinnett, a former Store Manager, testified at the August 12, 2004 hearing that the Employer presently employs about 41 employees at the Store. Based on current business demands, the Employer's ideal employee complement is about 46 to 48, but the Employer has been unable to fill the vacant positions. The Employer's busiest time period each year begins in the "Back-to-School" shopping season and reaches its peak around the first week of October when the weather begins to turn cold. Employment generally remains steady until Christmas, decreases immediately thereafter, picks up again in January, and remains high through May. The slowest times of the year are June, July, and early August. The Employer generally has about 59 to 62 employees at the Store at peak times.

⁴ The Board's Summary Judgment decision in that case was not published.

The Store has high employee turnover throughout the year. The Employer does not need to lay off employees when business slows, but simply does not hire new employees to replace employees that leave. When employees are hired during the busy season, they are treated as permanent employees.

III. ANALYSIS

The Employer contends that the Board should not direct an immediate election but should delay the election until the Store reaches its peak employee complement in order to enfranchise the most possible employees. In this regard, the Employer contends that a September 19 eligibility cutoff date should be used, and the election should be scheduled on October 8. The Petitioner opposes any delay in the election or the eligibility cutoff date.

I find that the circumstances do not warrant a delay in the Board's normal procedures for setting election dates and eligibility cutoff dates. Thus, in cases where the Board has postponed the election until the employer's peak season, the increase in employee complement has generally been far greater than in this case, usually in excess of 100 percent. See *NLRB v. Broyhill Co.*, 528 F.2d 719 (8th Cir. 1976), and cases cited therein, i.e., *Millbrook, Inc.* 204 NLRB 1148 (1973) (22 current employees, 67 at peak); *Kelly Brothers Nurseries, Inc.*, supra (47 current employees, 122 at peak); *California Vegetable Concentrates, Inc.*, 137 NLRB 1779, 1780 (290 current employees, 620 at peak); *Camp & Felder Compress Co.*, 121 NLRB 871, 872 (4 current employees, 110 at peak); *Richard A. Glass Co.*, 120 NLRB 914 (1958) (43 current employees, 80 at peak); *San Fernando Heights Lemon Association*, 72 NLRB 372, 376 (1947) (44 current employees, 115 at peak). In contrast, in *Bituma Corp.*, supra, the Board did not postpone the election although there was to be a 70 percent increase in the employee complement.

In this case, there are currently 41 employees, and at its peak the Employer anticipates having 59 to 62 employees. This increase is significantly less pronounced than in the cases in which the Board has delayed elections. Moreover, although this Decision will issue a few weeks before the Store's maximum period of employment, it should issue after the Employer has increased its employee complement by hiring employees for the "Back-to-School" shopping season. Accordingly, I will direct an election in the normal time frame contemplated by the Board's Casehandling Manual. *The Baugh Chemical Company*, supra.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time retail floor employees, floor runners, cashiers, back room production maintenance/loaders, balers, sorters, distributors, taggers, pricers, men's sizers, separators, hangers, shoe sorters, accessories sorters, and miscellaneous sorters employed by the Employer at its facility currently located in Pennsauken, New Jersey, excluding all store managers, assistant store managers, production managers, customer service managers, office clerical employees, guards, and supervisors as defined by the Act.⁵

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **United Food and Commercial Workers Union, Local 56, AFL-CIO**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they

⁵ At the hearing, the parties identified the following employees as the incumbents in excluded positions: Assistant Store Manager Eric Rivera, Production Manager Pondexter Medley, and Store Manager Darnell Cuttino.

appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **September 15, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by E-mail to Region4@NLRB.gov.⁶ Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days

⁶ See OM 04-43, dated March 30, 2004, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 04-43 is available on the Agency's website at www.nlr.gov.

prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **September 22, 2004**.

Signed: September 8, 2004

at Philadelphia, Pennsylvania /s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four